

**HONORABLE MARC L. BARRECA
CHAPTER 13
HEARING DATE: JUNE 23, 2021
HEARING TIME: 9 AM
HEARING LOCATION: TELEPHONE
RESPONSE DATE: JUNE 16, 2021**

**U.S. BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON**

In re:
RONALD E. HOWELL and DEE L
SHISHIDO,
Debtors.
Bankruptcy Case #: 15-15924-MLB
MOTION TO STRIKE MOTION
TO VACATE DEFAULT AND
RESPONSE TO MOTION TO
VACATE DEFAULT ORDER
AGAINST NAVIENT

I. SUMMARY OF ARGUMENT

A. The motion should be stricken for lack of supporting evidence.

Navient Solutions LLC (hereafter NS LLC) and Navient Corporation (hereafter Navient) fail to submit any supporting evidence for their motion. They allege improper notice without establishing or asserting lack of actual notice, nor of what internal actions led to its failure to respond five times. As discussed below, it is incumbent that such evidence be presented to the court in some form, usually by sworn declaration or affidavit. Without such supporting evidence here, the motion should be stricken in its entirety.

B. The motion should be denied on the merits

The 60(b)(4) motion should be denied because the court has had jurisdiction over NS LLC/Navient since it filed its creditor claims. Further, service on the Navient CEO

1 complies with the service rule for both NS LLC and Navient. Further still, NS LLC/Navient
2 has failed to show, on any basis, that it did not actually receive the five notices sent by the
3 debtors, including the fourth notice directed to the Navient Corporation CEO. The motion
4 under 60(b)(1) is invalid; there is no mistake of law. NS LLC/Navient failed to credit
5 payments under 11 USC 524(i). NS LLC/Navient presents no evidence to show it was not
6 paid for debts at issue. The order of default is valid and should be affirmed.

7 **II. SUPPLEMENTAL FACTS/FACTUAL OBSERVATIONS**

8 **A. The court has jurisdiction over NS LLC from its claim filing *and* Navient 9 Corporation LLC as its principal.**

10 Because NS LLC had already submitted its claims to the court, the court already
11 had jurisdiction over it. *Katchen v. Lady*, 382 U.S. 323, 334-35 (1966)(by presenting claim
12 respondents submitted themselves to all the consequences that attach to an appearance).
13 Similarly, as discussed below, because NS LLC was an agent of Navient Corporation, it
14 too should be treated as being under the jurisdiction of the court, generally speaking.

15 **B. NS LLC is a wholly owned subsidiary of Navient Corporation; both are 16 involved in making student loans and collecting on them.**

17 NS LLC is a wholly owned subsidiary of Navient Corporation; the following
18 appears on the NS LLC website home page:

19 © 2021 Navient Solutions, LLC (NMLS #212430). All
20 rights reserved.
21 Navient and the Navient logo are registered service
22 marks of Navient Solutions, LLC. Navient Corporation
23 and its subsidiaries, including Navient Solutions, LLC,
24 are not sponsored by or agencies of the United States of
25 America.

1 NS LLC is an agent of Navient Corporation. The business of both is the making of
2 student loans and securing their repayment.

3 **C. The debtors provided five separate notices to Navient: four to NS LLC and a
4 fifth to Navient Corporation incorporating the first four, which was sent
directly to the CEO, per direction of this court.**

5 NS LLC/Navient received five separate notices of these proceedings, culminating
6 in the final one mailed directly to its CEO in Delaware. Here the court should note that the
7 first notice was sent to NS LLC at two post office boxes: a general P.O. Box in Wilkes
8 Barre, number 9500, but also to the Bankruptcy Litigation Unit E3149 at P.O. Box 9430,
9 also in Wilkes Barre. Significantly, the fifth notice sent to the Navient CEO incorporated
10 the four prior ones that had been mailed to NS LLC at the P.O. boxes.

11 **D. NS LLC and Navient Corporation received all five notices**

12 The five notices were all duly delivered; none were returned. Similarly, there is no
13 declaration or affidavit from any person at NS LLC/ Navient stating that any of them were
14 not received.

15 **E. NS LLC /Navient simply failed to respond to the five notices.**

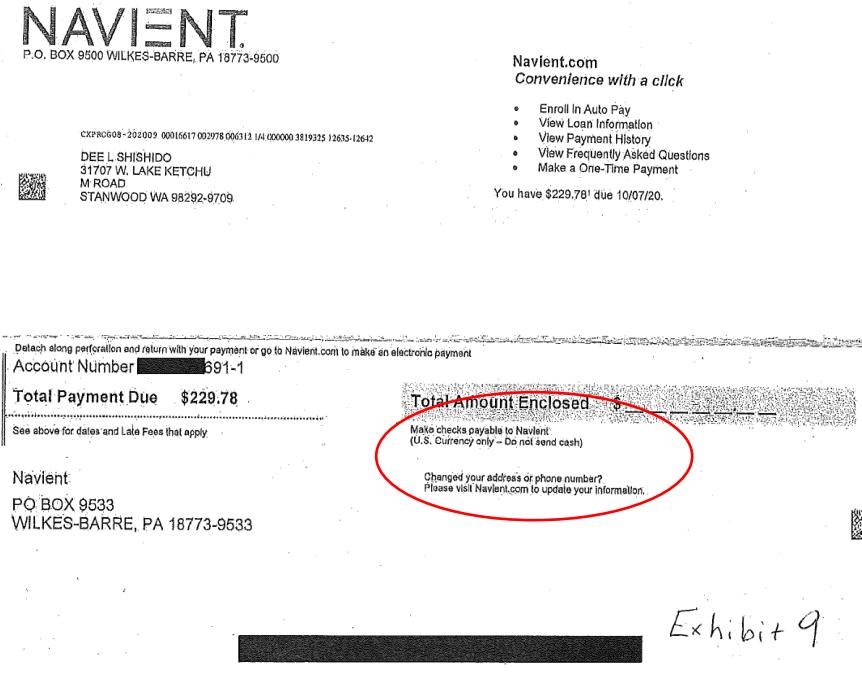
16 There is no explanation in the record anywhere of why both NS LLC and its parent
17 Navient Corporation completely failed to respond in any manner.

18 **F. NS LLC/Navient received payment for the loans at issue from the trustee.**

19 Similarly, the motion does not allege, anywhere, that it has not been paid for the
20 debtor's loans through the plan and the trustee.

G. NS LLC /Navient issued the statements and notices that violated the statute, including voice messages and text messages; they jointly participated in servicing the loans at issue.

NS LLC/Navient never denies that it did commit acts which would otherwise be in violation of the statute. It cannot. All communications to the debtor were identified as coming from "Navient.



Prior to the muted suspension of collection efforts for the debtors following NS LLC/Navient’s decision to respond to these proceedings in April of 2021, debtors received voice mails and texts from “Navient.” *Dec. D. Shishido.*

H. NS LLC/Navient suspended collection efforts following its recognition of this litigation.

Following NS LLC/Navient's realization and awareness of this litigation, it suspended – somewhat – collection efforts. The regular phone calls and text messages stopped, although most recently debtors did receive another collection letter from "Navient." *Dec. D. Shishido.*

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1 **I. Navient Corporation is the holder of the note.**

2 NS LLC/Navient asserts that Navient Corporation “does not service any student
3 loans in any fashion.” Still, the note in this matter is held by Navient Corporation.

4 **J. NS LLC/Navient missed the appeal deadline.**

5 NS LLC/Navient had 14 days to file an appeal of the court’s order. More than 14
6 days elapsed after the default judgment was entered without any appeal being filed.

7 **III. ARGUMENT ON MERITS**

8 **A. NS LLC and Navient Corporation should be treated as the same entity.**

9 The motion’s central premise is that NS LLC and Navient Corporation should be
10 treated separately, especially when analyzing sufficiency of process. That is a slippery slope,
11 as they are ultimately attached at the hip. Navient Corporation is the parent of NS LLC; NS
12 LLC is the fully owned subsidiary of Navient Corporation. The primary business of both
13 concerns making and collecting student loans. Account statements do not mention NS LLC,
14 but are labeled as being from “Navient.” Even before this court, they have in briefing through
15 single counsel deemed themselves collectively to be “Navient.” Debtors are required to make
16 payment to “Navient.” Debtors here have received phone calls, phone messages and texts
17 from “Navient.” The notion that they should be bifurcated is an artifice.

18 **B. The court had jurisdiction over both NS LLC and Navient Corporation; the
19 default judgment/order is not void under 60(b)(4).**

20 **1. NS LLC filed the claims originally; it is the agent of Navient Corp.**

21 This court gained personal jurisdiction over NS LLC, according to the U.S. Supreme
22 Court, when NS LLC filed its claims with this court. Further, as it is and was unquestionably

1 an agent for Navient Corporation, this court should conclude as a matter of law that there
2 was jurisdiction over it by agency and proxy.

3 **2. The service made upon the CEO binds both NS LLC and Navient
4 Corp.**

5 This court previously found that service by mail on the CEO of Navient Corporation
6 would be deemed to be sufficient for purposes of imposing contempt. NS LLC and Navient
7 Corporation take the position that it should not be. A defendant seeking relief from a default
8 judgment on the basis of insufficiency or service by U.S. mail must (1) rebut the presumption
9 of receipt and establish that it did not receive the process sent to it; (2) establish that failure
10 to receive the process was not the result of its own fault; and (3) show a meritorious defense
11 to the complaint against it. *In re Olympia Holding Corp.*, 230 B.R. 623, 43 Fed. R. Serv. 3d
12 44 (Bankr. M.D. Fla. (1999)).

13 **3. Neither NS LLC nor Navient provide any evidence of why all the
14 notices, though received, were ignored.**

15 Historically, typically, and traditionally, a party seeking to avoid a default judgment
16 presents its argument in the first instance by explaining, by sworn testimony, the
17 circumstances related to its failure to appear and defend. Two cases cited by NS LLC/Navient
18 illustrate this principle. *Cordero v. AT&T*, No. 15CV5601RRMST, 2017 WL52591
19 (2017)(declarations from AT&T employees); *Meer-Weis v. Kroger Co.*, 18CV1001
20 (2019)(declarations from Kroger employees). Here there is no evidence submitted by NS
21 LLC/Navient to explain how it came to be that they collectively received and ignored five
22 validly delivered notices. Without evidence to support and explain the failure to act,
23 collectively, the motion to vacate should be denied.

1 **4. The notice to the CEO of Navient Corporation was effective and**
2 **sufficient under the statute as to both it and NS LLC.**

3 The motion concedes that the debtor's service on the Navient Corporation CEO was
4 sufficient for service on Navient Corporation; despite that, it asserts that service must be made
5 separately on NS LLC. The debtors dispute this under a plain application of Rule 7004. First,
6 as pointed out above, there is plain evidence that "Navient," whatever that term might mean,
7 was involved in the administration of these loans, especially as to the collection of payments.
8 The current briefing says that NS LLC is the arm of Navient services its loans. Similarly, the
9 statements said "Navient;" debtors were directed to make payment to "Navient;" debtors
10 received voice mails and phone calls from "Navient;" debtors received text messages from
11 "Navient." In none of these instances was there any mention of "Navient Solutions LLC."
12 Again, NS LLC is a wholly owned subsidiary of Navient Corporation.

13 Rule 7004(3) says that service may be had on "a managing or general agent, or to any
14 other agent authorized by appointment or by law to receive service of process." Debtors here
15 assert that the CEO of Navient Corporation fits within this definition for purposes of
16 determining whether service on NS LLC is sufficient. The CEO of Navient Corporation is a
17 managing or general agent, by necessity and by law, for NS LLC. It is the principal for NS
18 LLC.

19 **5. The service provided was otherwise sufficient to apprise NS LLC/Navient**
20 **of the proceedings and to allow it a fair opportunity to defend.**

21 The backdrop to any sufficiency of service argument is whether it is constitutionally
22 sound under basic principles of due process, whether the notice provided afforded the non-
23 responding party a fair opportunity to understand the proceedings and to respond
24 appropriately. If the answer to this question is yes, then the court can fairly be said to have

1 personal jurisdiction. In this case, the answer to that inquiry clearly amplifies that provided
2 above, that this court fairly had jurisdiction over NS LLC/Navient such that it should be bound
3 by the default judgment.

4 First, as indicated, the court had jurisdiction because NS LLC/Navient filed the claims
5 within the bankruptcy case, and subjected itself to the jurisdiction of the court. Second, though
6 the four notices to the P.O. boxes for NS LLC did not comply with the statute, they were
7 received by NS LLC because 1) they were bona fide P.O. box numbers provided by NS LLC
8 and they were never returned to debtors and NS LLC submits no evidence indicating, in any
9 way, that they were not duly received. Third, the fifth notice was sent to the Navient
10 Corporation CEO at his valid corporate address in Delaware. That notice included and
11 incorporated the prior notices to NS LLC. Again, this was not returned to debtors, and there
12 is no evidence anywhere to indicate that it was not duly received by NS LLC/Navient. All of
13 these notices were designed to and did in fact provide NS LLC/Navient with fair opportunities
14 to appear in court and defend against the allegations. For reasons that are still unexplained,
15 *both* NS LLC and Navient Corporation did not respond. *Cf. In re Frates*, 507 B.R. 298 (9th
16 Cir. BAP 2019)(sufficient service by mail on Wells Fargo CEO, despite failure to serve Wells
17 Fargo counsel; default against Wells Fargo approved).

18 **6. There is no meritorious defense**

19 NS LLC/Navient has no meritorious defense to this action. It does not refute the fact that
20 it was engaging in the various collection activities; it does not submit evidence that it was not
21 paid. Despite the fact that it is the original claimant, it simply takes the position that it is
22 exempted from this law. This is audacious to be sure, but that does not amount to merit.

1 **C. There was no mistake under 60(b)(1)**

2 **1. The violation need not pertain to a discharged debt.**

3 The motion was filed under subsection (i) which plainly related, additionally, to failure
4 to credit payments made under a plan. NS LLC/Navient Corporation's attempt to cleverly
5 read the word "discharge" into the statute – through the use of brackets -- should be rejected.

6 **2. NS LLC/Navient failed to credit plan payments**

7 NS LLC/Navient's attempt here to disassociate itself from its agent USAF is spurious
8 and specious. NS LLC filed the claims. NS LLC/Navient is now trying to collect on the debt.
9 That it instructed the trustee to make payments to another entity does not exempt it from
10 properly crediting plan payments. Moreover, in making this this argument, NS LLC/Navient
11 Corporation, even now, does not say it has not been paid. Has it received funds from USAF?

12 **3. NS LLC/Navient Corporation repeatedly violated the statute.**

13 NS LLC/Navient Corporation is delusional when it asserts "the record is barren" of
14 any violations by it. The documents submitted to the court originally contained a series of
15 exhibits, all collection notices and letters, from "Navient" to the debtors. NS LLC/Navient
16 Corporation, in turn, in filing its claims with the court, directed the trustee to make payments
17 to its agent USAF. Moreover, NS LLC/Navient was the original claimant on the claim forms.
18 Here, in real time, NS LLC/Navient is asking this court to grant it a categorical exemption
19 from the statute by its manipulation of the claim form, making USAF the claims agent. NS
20 LLC/Navient fails to supply any authority for this proposition and it should be rejected here
21 as absurd.

4. NS LLC/Navient has since suspended collection efforts.

The “legal impossibility” argument of NS LLC/Navient is undercut by the fact that it has largely suspended collection efforts on the debtors since it became aware of the judgment here in April of this year. *Dec. D. Shishido.* If application of the statute were legally impossible against it, then why was there a suspension of such collection efforts? *Dec. D. Shishido.*

5. There were no extraordinary circumstances under 60(b)(6); NS LLC/Navient Corp. missed its appeal deadline.

In an attempt to mop up its problem here, the final argument made in the motion is that “these” circumstances of “legal impossibility” are somehow “extraordinary” under Rule 60(b)(6). NS LLC/Navient thus assert they should be excused from the ordinary 14 day appeal period. *Mtn. Vacate*, 10, ln.15 and fn. 5. There is no precedent or authority for their novel “legal impossibility” theories; likewise there are no extraordinary circumstances. Plain and simple, NS LLC/Navient missed the 14 day deadline multiple times, but most succinctly after the court entered the contempt order after service on the Navient Corporation CEO. Without some evidence as to why there was no response at that time, NS LLC/Navient should be bound by their failure to respond. There is nothing extraordinary about that.

IV. CONCLUSION

The motion to vacate should be denied and the order of default and contempt affirmed as to both NS LLC and Navient Corporation. Notice by mail provided to the Navient CEO was sufficient to invoke jurisdiction over it and NS LLC. Further, they received collectively no less than five notices of the proceedings and failed to respond five times. To this day there is no explanation as to why. The arguments under 60(b)(1) are artificial, contrived of

1 corporate chicanery and in avoidance of basic agency principles. Finally, the failure by NS
2 LLC/Navient to affirmatively assert that it has not been paid by the debtors, reveals that it
3 was, and further, that its violations of the statute were willful and deliberate. It's brazen
4 attempt here to artificially exempt itself from the plain requirement to properly credit debtors
5 payments should be rejected by this court.

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8 Respectfully submitted this 16th day of June 2021,

9
10 /s/ Thomas E. Seguine
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12 Counsel for Plaintiffs
13 WSBA # 17507
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Certificate of Service

2 I am employed in Skagit County, Washington, State of Washington. I am over the age of 18 and
3 am not a party to the within action; my business address is 1023 South 3rd Mount Vernon, WA 98273.

4 On or about June 16, 2021 I served a copy of this documents on the interested parties in this
5 action, listed below, in one or more of the following manner(s):

6 **BY REGULAR MAIL:** I placed copies of the document in sealed envelopes and caused such envelopes to
7 be deposited in the United States mail with postage thereon fully prepaid and addressed as stated in the
8 attached service list.

9 **BY HAND DELIVERY:** I placed copies of the document in sealed envelopes and caused such envelopes to
10 be delivered by messenger to the addresses as stated on the attached service list.

11 **BY FACSIMILE:** I served the document by facsimile to the facsimile numbers stated on the attached
12 service list by each party and/or attorney of record.

13 **BY ELECTRONIC MAIL:** I electronically transmitted copies of the document to the most recent known
14 email address of the addressee.

15 **OTHER:** _____

16 *Thomas E. Seguin*

17

Service List

18 Samuel J. Dart, WSBA 47871
19 Eisenhower Carlson
20 900 A. Street, Ste. 600
21 Tacoma WA 98402
22 Also sent by email to sdart@eisenhowerlaw.com
23 Counsel to Navient Solutions LLC and Navient Corp.

24 Joseph A. Florczak
25 77 W. Wacker Drive, Ste. 4100
26 Chicago IL 60601
27 Also sent by email to jflorczak@mguirewoods.com
28 Counsel to Navient Solutions LLC and Navient Corp.

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